

AMENDED IN SENATE APRIL 28, 2010

**SENATE BILL**

**No. 984**

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**Introduced by Senator Hollingsworth**

February 8, 2010

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~~An act to amend Section 1748.5 of the Civil Code, relating to credit cards.~~ *An act to amend Section 22358 of the Business and Professions Code, and to amend Sections 415.10 and 1011 of the Code of Civil Procedure, relating to service of process, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 984, as amended, Hollingsworth. ~~Credit cards.~~ *Service of process: residences.*

*Existing law requires specified persons to file and maintain with the county clerk, in the county in which they reside or in which their principal place of business is located, a certificate of registration as a process server. That law sets forth a procedure for the revocation or suspension of a certificate if a county clerk determines that a service of process does not comply with the provisions of law governing service of process within this state. Existing law authorizes personal service upon a party in a civil action, if no specific provision is made, by leaving the notice or other papers at the party's residence, between the hours of 8 a.m. and 6 p.m. with a person of not less than 18 years of age.*

*This bill would instead authorize personal service in all civil proceedings, if made at party's residence, to be made between the hours of 7 a.m. and 8 p.m. This bill would also require the person making the service to state his or her full name, to state that he or she is at the residence for the purpose of making service, and to identify the party upon whom the service is directed. This bill would impose a penalty of*

\$25,000, per violation, against a server who makes service outside of the designated hours or fails to make these specified disclosures, and would require the revocation of that server's certificate of registration in accordance with existing law. This bill, by specifying new circumstances under which a certificate of registration is required to be revoked, would increase the duties imposed on county clerks and public prosecutors and would constitute a state-mandated local program. This bill would further impose a penalty of \$10,000 for service made to the wrong residence and would also require the revocation of that server's certificate of registration if that erroneous service was caused by the server's negligence, in accordance with existing law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing state and federal law regulate the terms and conditions of credit cards. Existing state law permits a credit cardholder to request the card issuer to inform the cardholder of the total amount of finance charges assessed on the account during the preceding calendar year and requires the card issuer to provide that information to the cardholder within 30 days without charge, except as specified.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 22358 of the Business and Professions
- 2     Code is amended to read:
- 3     22358. (a) (1) A certificate of registration may be revoked or
- 4     suspended whenever it has been determined that the registrant has
- 5     made a service of process, including service completed by an
- 6     employee or independent contractor of the registrant, which does

1 not comply with the provisions of law governing the service of  
2 process in this state or constitutes an improper service of process  
3 not amounting to a violation of law.

4 (2) *A certificate of registration shall be revoked if it is*  
5 *determined that the registrant has made a service of process at*  
6 *the wrong address due to the negligence of the registrant. In*  
7 *addition to the revocation of the certificate of registration, the*  
8 *registrant shall also be assessed a fine of ten thousand dollars*  
9 *(\$10,000), for each violation, to be paid to the person or persons*  
10 *who reside at the address at which the service was erroneously*  
11 *made.*

12 (b) An investigation concerning the revocation or suspension  
13 of a certificate of registration may be commenced at any time at  
14 the option of the county clerk if the county clerk deems it to be  
15 appropriate. A complaint by any person who has alleged that he  
16 or she has been injured by a service of process shall be investigated  
17 by the public prosecutor. The investigation shall determine if the  
18 registrant complied with the provisions of law governing the  
19 service of process or constituted improper service of process not  
20 amounting to a violation of the law.

21 (c) If the public prosecutor determines from the investigation  
22 that cause may exist for the suspension or revocation of the  
23 certificate of registration, he or she shall set the matter for hearing  
24 and give notice to the registrant. That hearing shall be conducted  
25 in accordance with Chapter 5 (commencing with Section 11500)  
26 of Division 3 of Title 2 of the Government Code except that the  
27 decision of the administrative law judge shall be final. For the  
28 purposes of those provisions, the public prosecutor shall be deemed  
29 to be the agency.

30 (d) If, after the hearing, the county clerk is notified after the  
31 decision has become effective that the administrative law judge  
32 has directed that the registrant's certificate be suspended or  
33 revoked, the county clerk shall forthwith suspend or revoke the  
34 certificate. If the certificate is revoked, the bond or cash deposit  
35 required by Section 22353 shall be forfeited to the county treasury  
36 subject to the right of a person to recover against the bond or cash  
37 deposit under Section 22357.

38 *SEC. 2. Section 415.10 of the Code of Civil Procedure is*  
39 *amended to read:*

1 415.10. (a) A summons may be served by personal delivery  
2 of a copy of the summons and of the complaint to the person to  
3 be served. Service of a summons in this manner is deemed  
4 complete at the time of such delivery.

5 (b) (1) *Notwithstanding any other provision of law, a summons*  
6 *served by personal delivery of a copy of the summons and of the*  
7 *complaint to the personal residence of the person to be served may*  
8 *only be made between the hours of seven in the morning and eight*  
9 *in the evening. The person making the service shall state his or*  
10 *her full name, state that he or she is at the residence for the*  
11 *purpose of making service, and identify the party upon whom the*  
12 *service is directed.*

13 (2) *If service is made at a time other than the hours specified*  
14 *in paragraph (1), or if the server fails to state his or her full name,*  
15 *state that he or she is at the residence for the purpose of making*  
16 *service, or to identify the person upon whom service is directed in*  
17 *violation of paragraph (1), the server shall have his or her*  
18 *certificate of registration revoked in accordance with Section*  
19 *22358 of the Business and Professions Code and shall be assessed*  
20 *a fine in the amount of twenty-five thousand dollars (\$25,000), for*  
21 *each violation, to be paid to the party upon whom service is made.*

22 (3) *If service is made to the wrong address, the person making*  
23 *the erroneous service shall be assessed a fine of ten thousand*  
24 *dollars (\$10,000), for each violation, to be paid to the person or*  
25 *persons who reside at the address at which the service was*  
26 *erroneously made. If the service was made to the wrong address*  
27 *because of an error in the determination of the address by another*  
28 *person, the person who made the error in determining the address*  
29 *shall be responsible for payment of the fine.*

30 ~~The~~  
31 (c) *The date upon which personal delivery is made shall be*  
32 *entered on or affixed to the face of the copy of the summons at the*  
33 *time of its delivery. However, service of a summons without such*  
34 *date shall be valid and effective.*

35 *SEC. 3. Section 1011 of the Code of Civil Procedure is*  
36 *amended to read:*

37 1011. The service may be personal, by delivery to the party or  
38 attorney on whom the service is required to be made, or it may be  
39 as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or a person 18 years of age or older cannot be found at the attorney's residence, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a ~~mail box~~ mailbox, subpost office, substation, or mail chute or other like facility regularly maintained by the Government of the United States directed to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the address of the attorney or party of record as designated on the court papers, or by delivering the notice or papers to the clerk of the court, for the attorney.

(b) (1) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of ~~eight~~ seven in the morning and ~~six~~ eight in the evening, with some person of not less than 18 years of age. *The person making the service shall state his or her full name, state that he or she is at the residence for the purpose of making service, and identify the party upon whom the service is directed.* If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court, for that party.

(2) *If service is made at a time other than the hours specified in paragraph (1), or if the server fails to state his or her name full name, state that he or she is at the residence for the purpose of making service, or to identify the party upon whom service is directed in violation of paragraph (1), the server shall have his or her certificate of registration revoked in accordance with Section 22358 of the Business and Professions Code and shall be assessed a fine in the amount of twenty-five thousand dollars (\$25,000), for each violation, to be paid to the party upon whom service is made.*

(3) *If service is made to the wrong address, the person making the erroneous service shall be assessed a fine of ten thousand dollars (\$10,000), for each violation, to be paid to the person or persons who reside at the address at which the service was erroneously made. If the service was made to the wrong address because of an error in the determination of the address by another person, the person who made the error in determining the address shall be responsible for payment of the fine.*

SEC. 4. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

SEC. 5. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to ensure that service of process is performed in a manner that does not interfere with a homeowner's expectations of privacy and freedom from harassment, it is necessary that this act take effect immediately.*

~~SECTION 1. Section 1748.5 of the Civil Code is amended to read:~~

~~1748.5. (a) A cardholder may request, not more frequently than once a year, that the card issuer inform the cardholder of the total amount of finance charges assessed on the account during the preceding calendar year and the card issuer shall provide that information to the cardholder within 30 days of receiving the request, without charge.~~

~~If the cardholder's request for the information is made in writing, the card issuer shall provide the information in writing. However,~~

1 ~~if the card issuer is required to furnish the cardholder with a~~  
2 ~~periodic billing or periodic statement of account or furnishes the~~  
3 ~~billing or statement of account, the requested statement of finance~~  
4 ~~charges may be furnished along with the periodic billing or periodic~~  
5 ~~statement of account.~~

6 ~~(b) This section does not apply to card issuers or cardholders~~  
7 ~~who issue or use credit cards in connection with a retail installment~~  
8 ~~account, as defined by Section 1802.7.~~

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